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Liaison Counsel for Plaintiffs

E-FILED - 11/2/07

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

_____)
In re BEA SYSTEMS, INC. DERIVATIVE)
LITIGATION)

_____)
This Document Relates To:)
All Actions)
_____)

Master File No. C-06-4459 (RMW)

**STIPULATION AND ☐ ORDER GRANTING LEAVE FOR
PLAINTIFFS TO FILE A SECOND
AMENDED CONSOLIDATED
COMPLAINT**

STIPULATION AND ☐ ORDER
GRANTING LEAVE FOR PLAINTIFFS TO FILE
A SECOND AMENDED CONSOLIDATED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a), Nominal Defendant BEA Systems, Inc. (“BEA Systems”) and Defendants Thomas M. Ashburn, Carol A. Bartz, Barbara J. Britton, Mark T. Carges, Sam Cece, Alfred S. Chuang, William T. Coleman, Mark P. Dentinger, Matthew S. Green, Stewart K.P. Gross, William M. Klein, Ivan M. Koon, William H. Janeway, Joseph H. Menard, Dean Morton, Tod Nielsen, Edward W. Scott, Jr., Robert A. Shipp and Deborah Stanley (collectively, “Defendants”) and Representative Plaintiffs Musto Family Trust, Vincent Musto, Trustee, George T. Barcheski and Catherine Molner (“Plaintiffs”), by and through their respective counsel of record, hereby stipulate and agree that Plaintiffs will be granted leave to file a Second Amended Consolidated Complaint. This stipulation is based on the following facts:

WHEREAS, this action is a shareholder’s derivative action allegedly brought for the benefit of nominal defendant BEA Systems against certain members of its Board of Directors (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches of fiduciary duties, unjust enrichment, statutory violations, and other violations of law;

WHEREAS, on March 12, 2007, Plaintiffs filed an Amended Consolidated Complaint (“Amended Complaint”);

WHEREAS, on April 26, 2007, Defendants filed Motions to Dismiss the Amended Complaint (“Motions to Dismiss”);

WHEREAS, by Order dated September 13, 2007, Plaintiffs’ opposition to Defendants’ Motions to Dismiss is due to be filed by November 6, 2007;

WHEREAS, on October 12, 2007, it was publicly announced that Oracle Corporation (“Oracle”) had proposed to purchase BEA Systems for \$17.00 per share; and

WHEREAS, on October 12, 2007, BEA Systems rejected Oracle’s offer; and

WHEREAS, Plaintiffs have requested leave to file a Second Amended Consolidated Complaint reflecting this proposed transaction and to include additional material information that became available only after the filing of the Amended Complaint;

STIPULATION AND [] ORDER
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1 WHEREAS, Defendants have not served a responsive pleading and do not oppose this
2 amendment;

3 WHEREAS, the amendment is not for the purpose of delay, promotes judicial efficiency,
4 and will not cause prejudice to any party.

5 THEREFORE, the parties stipulate, subject to the approval of the Court, that Plaintiffs shall be
6 granted leave to file a Second Amended Consolidated Complaint, which is attached hereto as
7 Exhibit A.

8
9 DATED: October 25, 2007

SCHUBERT & REED LLP

10 /s/ Aaron H. Darsky

11 Robert C. Schubert
12 Juden Justice Reed
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19 *Liaison Counsel for Plaintiffs*

20 *I, Aaron H. Darsky, am the ECF user whose ID and password are being used to file this*
21 *Stipulation and [Proposed] Order. In compliance with General Order 45, X.B., I hereby*
22 *attest that I have on file all holograph signatures for any signatures indicated by a "conformed"*
23 *signature (/S/) within this efiled document.*

24 SCHIFFRIN BARROWAY
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Lead Counsel for Plaintiffs

28 STIPULATION AND [] ORDER
GRANTING LEAVE FOR PLAINTIFFS TO FILE
A SECOND AMENDED CONSOLIDATED COMPLAINT

1
2
3 DATED: October 25, 2007

WILSON SONSINI
GOODRICH & ROSATI

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10 *Counsel for Nominal Defendant BEA Systems,*
11 *Inc. and Defendants Thomas M. Ashburn, Carol*
12 *A. Bartz, Barbara J. Britton, Mark T. Carges,*
13 *Sam Cece, Alfred S. Chuang, William T.*
14 *Coleman, Mark P. Dentinger, Matthew S. Green,*
15 *Stewart K.P. Gross, William M. Klein, Ivan M.*
16 *Koon, William H. Janeway, Joseph H. Menard,*
17 *Dean Morton, Tod Nielsen, Edward W. Scott, Jr.,*
18 *Robert A. Shipp and Deborah Stanley*

13 * * *

14 **ORDER**

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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19 DATED: 11/2/07

Ronald M. Whyte
The Hon. Ronald M. Whyte
United States District Court Judge

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